

SENATE BILL No. 365

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-37-19-5; IC 34-54-1-4; IC 35-50-5-3.

Synopsis: Legal status of restitution orders. Provides that restitution ordered in a criminal action is a final judgment and has the effect of a final judgment in a civil action.

Effective: July 1, 2004.

Mrvan

January 12, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 365

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-37-19-5, AS AMENDED BY P.L.116-2002,
2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 5. (a) This section applies if a child is a delinquent
4 child under IC 31-37-1.

5 (b) The juvenile court may, in addition to an order under section 6
6 of this chapter, enter at least one (1) of the following dispositional
7 decrees:

8 (1) Order supervision of the child by:

9 (A) the probation department; or

10 (B) the county office of family and children.

11 As a condition of probation under this subdivision, the juvenile
12 court shall after a determination under IC 5-2-12-4 require a child
13 who is adjudicated a delinquent child for an act that would be an
14 offense described in IC 5-2-12-4 if committed by an adult to
15 register with the sheriff (or the police chief of a consolidated city)
16 under IC 5-2-12.

17 (2) Order the child to receive outpatient treatment:

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(A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or

(B) from an individual practitioner.

(3) Order the child to surrender the child's driver's license to the court for a specified period of time.

(4) Order the child to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing.

(5) Partially or completely emancipate the child under section 27 of this chapter.

(6) Order the child to attend an alcohol and drug services program established under IC 12-23-14.

(7) Order the child to perform community restitution or service for a specified period of time.

(8) Order wardship of the child as provided in section 9 of this chapter.

(c) An order of restitution under this section is a final judgment and has the effect of a final judgment in a civil action.

SECTION 2. IC 34-54-1-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 4. An order of restitution by a:**

(1) state court; or

(2) federal court having jurisdiction in Indiana;

as part of a criminal or juvenile delinquency proceeding is, for purposes of Indiana law, a final judgment and has the effect of a final judgment in a civil action.

SECTION 3. IC 35-50-5-3, AS AMENDED BY P.L.88-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 3. (a)** Except as provided in subsection (i), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

(1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);

(2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;

(3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical

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condition;

(4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a) or (i) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(1) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(2) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8.

The victim services division of the Indiana criminal justice institute shall deposit the restitution received under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a) or (i) does not bar a civil action for:

(1) damages that the court did not require the person to pay to the

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1 victim under the restitution order but arise from an injury or
 2 property damage that is the basis of restitution ordered by the
 3 court; and

4 (2) other damages suffered by the victim.

5 (f) Regardless of whether restitution is required under subsection (a)
 6 as a condition of probation or other sentence, the restitution order is not
 7 discharged by the completion of any probationary period or other
 8 sentence imposed for a felony or misdemeanor.

9 (g) A restitution order under subsection (a) or (i) is not discharged
 10 by the liquidation of a person's estate by a receiver under IC 32-30-5
 11 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or
 12 IC 34-2-7 before their repeal).

13 (h) The attorney general may pursue restitution ordered by the court
 14 under subsections (a) and (c) on behalf of the victim services division
 15 of the Indiana criminal justice institute established under IC 5-2-6-8.

16 (i) The court may order the person convicted of an offense under
 17 IC 35-43-9 to make restitution to the victim of the crime. The court
 18 shall base its restitution order upon a consideration of the amount of
 19 money that the convicted person converted, misappropriated, or
 20 received, or for which the convicted person conspired. The restitution
 21 order issued for a violation of IC 35-43-9 must comply with
 22 subsections (b), (d), (e), and (g), and is not discharged by the
 23 completion of any probationary period or other sentence imposed for
 24 a violation of IC 35-43-9.

25 **(j) An order of restitution under this section is a final judgment**
 26 **and has the effect of a final judgment in a civil action.**

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